



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 31, 1995

Ms. Carol Estes Bray  
Senior Assistant City Attorney  
City of Corpus Christi  
P.O. Box 9277  
Corpus Christi, Texas 78469-9277

OR95-745

Dear Ms. Bray:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 33112.

The City of Corpus Christi (the "city") received a request for "the reasons given for each individual by Police Chief Henry Garrett why the individuals with the highest grades . . . on the attached list were non-selected to attend the Police Academy." You claim that the requested information is excepted from disclosure under sections 552.101, 552.102, and 552.103 of the Government Code. You have submitted the requested documents to this office for our review.

Section 552.103(a) excepts from disclosure information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

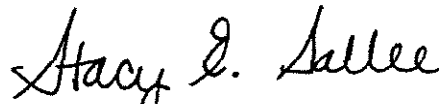
The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The city must meet both prongs of this test for information to be excepted under 552.103(a).

You have submitted a petition in a lawsuit filed by one of the candidates for the police academy in which he contests the police department's failure to hire him. We have reviewed the requested documents and conclude that they are related to the pending litigation. Therefore, the city may withhold the requested information under section 552.103(a). We note that generally when the opposing party in the litigation has seen or had access to any of the information in these records, there is no justification for withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982).<sup>1</sup>

You state that, as three of the candidates listed by the requestor were offered employment by the police department, no reasons for non-selection were provided to those candidates. The Open Records Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision No. 452 (1986) at 3. Therefore, the city need not respond to the request as to these three individuals.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee  
Assistant Attorney General  
Open Government Section

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<sup>1</sup>As we have concluded that the city may withhold the requested documents under section 552.103(a), we need not now address your claim exceptions under sections 552.101 and 552.102. However, if the city receives a subsequent request for these same documents, we suggest that the city re-submit to this office the documents and the city's arguments as to why sections 552.101 and 552.102 except the documents from disclosure. This office will consider those arguments at that time.

SES/LRD/rho

Ref.: ID# 33112

Enclosures: Submitted documents

cc: Mr. Mel Cox  
4917 Delwood Apt. A2  
Corpus Christi, Texas 78413  
(w/o enclosures)